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IN THE HIGH COURT OF KARNATAKA AT BANGALORE.
Dated this the 28th day of May, 1998.

BEFORE
THE HON'BLE MR.JUSTICE MOHAMED ANWAR.

W.P.No. 13363/98.

Between:

Smt.Ammani Verghese,
w/o.m.T.Verghese,
aged about 60 years,
r/o.Krishnapura Cross,
Idya village,
Mangalore Taluk, D.K.

Petitioner.

(By Sri.K.M.Nataraj)

And:

1. The State of Karnataka,
rep. by its Secretary,
Department of Revenue,
Vidhana Soudha, Bangalore.
2. The Deputy Commissioner,
D.K.District,
Mangalore,
D.K.
3. The Assistant Commissioner,
D.K.District,
Mangalore,D.K.
4. Smt.Rukmini,
major.
5. Mohan Mugeru,
major.
6. Neelayya Mugeru,
major.
7. Kumar Mugeru,
major.

R-4 to 8 are r/a.
No.8-18, Near Excise Office,

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Suratkal Post, Idya Village,
Mangalore Taluk.

Respondents.

(By Sri.M.Siddagangaiah, Govt.
Advocate for R1 to R3)

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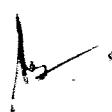
Writ petition under Arts.226 and 227 of the Constitution of India challenges the validity and correctness of the notice dated 23-1-1998 in No.PTL.CR:48/92-93 issued by the third respondent and praying for issue of a writ in the nature of certiorari.

This petition coming on for hearing this day, the court made the following:

ORDER.


Heard.

2. Indisputably, the land bearing Sy.No.171/15 of Idya village of Mangalore Taluk measuring 10 cents was originally granted to ancestors of respondents 4 to 7 who were the members of Scheduled Castes. The said land was purchased by the petitioner from them on 24-1-1974 in contravention of prohibition clause 4(1) "Standing orders of the Board of Revenue" issued under the authority of Board of Revenue of Madras (now Chennai) and, therefore, the action for eviction was initiated by respondent NO.3 Asst. Commissioner under S.5(1) of the Karnataka Scheduled Castes/Scheduled Tribes



(Prohibition of Transfer of Certain Lands 1978) Act, ('the Act' for short). On enquiry order of eviction was passed by the Asst Commissioner, third respondent, which was challenged before Deputy Commissioner in appeal. The said order was confirmed by second respondent Deputy Commissioner in appeal. The challenge to the said order in the writ petition before this court also came to be dismissed. The dismissal of the writ petition was challenged in writ appeal. That appeal was also dismissed. With the result, the eviction order of third respondent Asst. Commissioner came to be confirmed and binding on the parties.

3. Now the case of the petitioner is that he and respondent Nos.4 to 7 have made separate applications to second respondent praying that the sale of the said lands made by respondent Nos.4 to 7 in favour of petitioner under a registered sale deed of 24-9-1974 may be ratified invoking the powers under S.4(2) of the Act. It is also prayed in that application that fresh permission contemplated under S.4(2) may be accorded to



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respondent Nos.4 to 7 to alienate the said land to petitioner. During pendency of that application the grievance of the petitioner is that respondent NO.3 has issued notice dated 21-3-1998 Annexure-C directing the petitioner to vacate the land. Aggrieved by that notice, the petitioner has filed this petition challenging its validity and praying to quash the same as also seeking directions to R-2 Deputy Commissioner to consider the said applications of petitioner and R4 to R7 and grant them either the ratification sought for or a fresh permission to sell the said land to the petitioner.

4. Reiterating the grounds urged in the petition Mr.Nataraj, learned counsel for petitioner, submitted that S.4(2) entitles either the petitioner or the grantees to seek either the ratification or permission as prayed in their application from R-2 and, therefore, till the said application is disposed of by him petitioner cannot be evicted from the land in execution of the said order of eviction of third respondent.

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5. Learned Govt. Advocate argued otherwise contending that the provision of the Act does not apply to the instant case and, therefore, the petition is liable to be dismissed.

6. For our purpose sub.sec.(2) of Sec.4 of the Act is material which reads:

" PROHIBITION OF TRANSFER OF GRANTED LAND.

(1).....

(2) No person shall, after the commencement of this Act transfer or acquire by transfer any granted land without the previous permission of the Government.

(3)....."

A plain reading of S.4(2) of the Act makes it abundantly clear that a grantee or intended purchaser of the land may, before the expiry of the prohibited period, sell or purchase as the case may be, the same with the permission of the Government. In other words obtaining of previous permission of the Government for the purpose is a condition precedent for any alienation of the land by the grantee under

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the Act. This provisions does not invest any power with the Government or the Deputy Commissioner to ratify any alienation of the land made in contravention of the said prohibiting clause. Nor does it confer power on the Deputy Commissioner to accord permission to the grantee to sell the granted land afresh to a person who had already purchased the land contrary to the provisions of the Act. Therefore, I find no weight and legal force in the submission of Mr.Nataraj, learned counsel for the petitioner.

6. Hence, petition is dismissed.

Learned Govt. Pleader is permitted to take notice and file memo within two weeks from today.

Sd/-
JUDGE

